

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 103 of 2003
in
SPECIAL CIVIL APPLICATION No 9948 of 2002
with
CIVIL APPLICATION No. 451 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

and

Hon'ble MR. JUSTICE K.A. PUJ

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

JALARAM CERAMICS LTD.

Versus

OFFICE OF EMPLOYEES PROVIDENT FUND ORGANISATION

Appearance:

1. LETTERS PATENT APPEAL No. 103 of 2003
MR RC JANI for Appellant No.
MR BHARAT T RAO for Respondent No. 1
-

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

and
MR.JUSTICE K.A.PUJ

Date of decision: 24/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

The present Letters Patent Appeal is filed against the order of the learned Single Judge of this Court passed in Special Civil Application No.9948/2002 on 30-10-2002, whereby the orders passed by the Assistant Provident Fund Commissioner, Gujarat Region, Ahmedabad on 31-5-2002 under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") as well as, the order passed by him on 20th August, 2002 in the Review Application preferred by the appellant under Section 7-B of the Act, were confirmed.

2) The brief facts giving rise to the present petition are that the respondent has passed an order under Section 7-A of the Act against the present appellant on 31-5-2002, determining the petitioner's liability of Rs.18,97,723. The said order was passed on the grounds that the appellant has not remained present and no request was made for adjournment of the matter and that the order for assessment was made on the basis of the balance sheet furnished by the appellants for the years 1998-99 to 2001-2002.

3) Being aggrieved by the said order, the appellant has preferred Review Application in Form 9A by invoking the provisions contained in Section 7-B of the Act raising the grounds that the sufficient opportunities were not given to the appellant and thereby the principle of natural justice was violated and that the amount ordered to be paid on labour charges was already paid and the detailed calculation was attached along with the said Review Application and that no details were called for by the respondent with regard to the particulars of labour charges during the course of hearing and that the details of labour charges furnished along with Review Application were tallied with the balance sheet and that if no further opportunity was given to the appellant, the same would cause irreparable loss and injury, which could not be quantified in terms of money. The respondent has, however, rejected the said application vide his letter dated 28-8-2002 stating that ample opportunities were given to the appellant to represent its case under Section 7-A of the Act and that no new matter or evidence

was produced along with the Review Application.

4) Being aggrieved by the said order, the appellant has filed the Special Civil Application No.9948/2002 which also came to be rejected by an order passed by the learned Single Judge of this Court on 30-10-2002 holding that the appellant-company did not deserve any sympathy at the hands of this Court. It is this order of the learned Single Judge, which is under challenge in the present Letters Patent Appeal.

5) This Court has issued notice on 20th January, 2003 making it returnable on 10-2-2003. While issuing the notice this Court has taken note of the statement made by Mr.R.C.Jani, learned advocate appearing for the appellant and that the appellant has not filed any appeal against the impugned order of the respondent and the provisions contained in Section 7-B (i) of the Act were resorted to by the appellant by filing Review Application before the respondent. Despite service of notice, nobody appeared on 10-2-2003 and even on 25-2-2003. This Court has, therefore, passed an order stating that looking to the nature of controversy and the amount assessed towards provident fund by the competent authority, it would be expedient and in the larger interest of justice to issue notice to the Assistant Provident Fund Commissioner, Gujarat Region, making it returnable on 11th March, 2003. The respondent thereafter filed its appearance and Mr.B.T.Rao, learned advocate appeared on behalf of the respondent. An affidavit in reply was also filed resisting the appeal filed by the appellant by invoking Clause 15 of Letters Patent.

6) Mr.R.C.Jani, learned advocate appearing for the appellant submitted that original order was passed ex-parte. The appellant had appeared on two occasions and filed necessary details. However, the appellant could not appear on 24-4-2002 and straightway order was passed raising the demand of Rs.18,98,723/-. He has further submitted that Review Application filed by the appellant, was also rejected without granting any opportunity of being heard and without assigning any reason whatsoever. He has further submitted that if the Review Application would have been considered on merits by the respondent-authority, no amount would have been required to be paid by the appellant. He has further submitted that since the demand was raised to the extent of Rs.18,97,923/- and the appellant has already paid the amount of Rs.10,21,075/-, the appellant is ready and willing to deposit an amount of Rs.8 lacs before this Court, subject to the outcome of the order to be passed

by the respondent-authority, after hearing the appellant in the matter. He has further submitted that provident fund amounts deducted from the salary of the employees of the company for the year 1998-99 to 2001-2002 were paid by the company, which have come to about Rs.3,90,101/and that provident fund from the salaries of the labourers of the contractors were paid by the appellant to the tune of Rs.10,21,075/- and further amount of Rs.10,965.24 ps. was also recovered by respondent authority directly from the bank and therefore, only the balance amount of Rs.8,66,682.76 ps. was to be paid as per the calculation made by the respondent-authority. It is in this view of the matter, Mr.Jani has submitted that the orders passed by the respondent authority are required to be quashed and set aside and directions are to be issued to the respondent-authority to hear the appellant afresh and determine the amount on account of provident fund to be paid by the appellant in respect of its own employees, as well as the employees of the contractors.

7) Mr.B.T.Rao, learned advocate appearing for respondent on the other hand, has raised the preliminary issue regarding the maintainability of the petition under Article 226/227 of the Constitution of India, as well as the present appeal under Clause 15 of Letters Patent. He has further submitted that the review lies before the authority on a very limited point under Section 7-B of the Act and if the appellant fails to point out before the authority that he was sufficiently prevented from approaching the authority and that a particular document has not been in the custody, the review does not lie. He has further submitted that the appellant has not produced no new material before the authority nor it has been pointed out that a new material has been found out by the appellant on discovery. It was further stated that the order under Section 7-A was passed by the respondent-authority after affording reasonable opportunity of hearing to the appellant and since the said order could not be said to be an ex-parte order, the Review Application was rightly rejected by the respondent-authority. Mr.Rao has further submitted that Sub-section 3 of Section 7-B of the Act, which inter alia, provides that "where it appears to the Officer receiving an application for review, that there is no sufficient ground for review, he shall reject the application." Furthermore, the proviso of Section 7-B is also very necessary for the purpose of present controversy, which reads thus "(a) No other application shall be granted without previous notice to all the parties to enable them to appear and be heard in respect of the order in respect of which the review is sought for

and (b) no such application shall be granted on the mere discovery of new matter or evidence when the applicant alleges was not within his knowledge or could not be produced by him when the order was made without proof to such allegation". He has further submitted that against an order passed by the respondent-authority under Section 7-A, the statutory appeal under Section 7-I is available to the appellant, but instead of availing the said statutory remedy, the appellant preferred a petition before this Court and when the same was rejected, the present Letters Patent Appeal was filed. He has further submitted that even against an order passed in review, the appeal lies before the Tribunal and since the appellant has not filed any appeal either against the order passed under Section 7-A of the Act or an order passed in Review Application under Section 7-B of the Act, this Court should not entertain the present Letters Patent Appeal, filed against the order of the learned Single Judge of this Court, who has rightly rejected the petition filed before him, challenging the said two orders passed by respondent-authority.

8) We have heard the learned advocate appearing for the respective parties and we have also considered their submissions, prima facie we are in agreement with the submissions of Mr. Rao that when a statutory remedy is provided the Court should not normally exercise its extraordinary writ jurisdiction conferred on it under Article 226/227 of the Constitution of India. But this does not mean that there is total ban on the exercise of such powers by the Court. If in a given case and looking to the facts and circumstances of the case, as well as to meet with the interest of justice and when the Court is of the view that principle of natural justice is violated or the order is passed without assigning any reason or without considering the grounds raised by the aggrieved party, the Court may exercise its extraordinary writ jurisdiction under Article 226/227 of the Constitution of India. The present case falls within these parameters and hence this Court is inclined to show indulgence in the matter. It is found from the records that the appellant could not remain present on 24-4-2002, though on earlier two occasions, i.e. on 26-3-2002 and 20-4-2002 the appellant did remain present before the respondent-authorities and submitted balance sheet for the years 1998-99 to 2001-2002. Thereafter, the respondent-authority has passed the order under Section 7-A of the Act on 31-5-2002, without calling for any further explanation from the appellant, based on the balance sheet filed by the appellant. Though in strict sense, the said order could not be said to be an ex-parte

order, the fact still remains that the appellant was not granted adequate opportunity in the matter and hence it was appropriate case for review and still the review application was not entertained by the respondent-authority. Before rejecting the Review Application no opportunity was given by the respondent-authority and the application was also decided by the respondent-authority in a casual and slipshod manner. The appellant has filed detailed break up along with Review Application and yet the same was not considered. Before us, the appellant has challenged the calculation made by the respondent-authority. According to the appellant, if the facts were appreciated by the respondent-authority, no amount would have been payable by the appellant. However, only with a view to show the bonafide of the appellant, a further amount of Rs.8 lacs was offered to be deposited. If the amount, which is already paid by the appellant to the respondent-authority and amount which is offered to be deposited and taken into consideration, this Court prima facie is of the view that the demand raised by the respondent-authority appeared to have been satisfied by the appellant. It is in this background of the matter and without going into the merits and demerits of the other issues raised by the parties, we quash and set aside the impugned orders passed by the respondent-authorities and remit this matter to the respondent-authority with a direction to decide afresh, after giving proper opportunity to the appellant. We also direct the appellant to deposit an amount of Rs.8 lacs before the respondent-authorities and the same can be adjusted and appropriated against the demand, that maybe computed and raised after passing appropriate order in this regard. On payment of the amount of Rs.8 lacs and till the fresh order is passed by the respondent-authority, the respondent authority will not take any coersive measure. If any bank account of the appellant is either seized or attached the same should be removed forthwith. The appellant is permitted to put all these records and documents before the respondent-authorities. The appellant is further directed to file an undertaking before this Court stating that the appellant will pay the balance amount to the Respondent Authority, on fresh determination of its liabilities u/s. 7A of the Act, subject to his right to challenge the said order before an appropriate forum.

9) Looking to the issue involved in the petition/LPA and since the matter is remitted to the Respondent Authority for its fresh adjudication u/s. 7A of the Act and since the appellant is directed to pay Rs.8 lacs to the Respondent Authority, this petition is disposed of at

the admission stage.

10) Subject to the above directions, the Appeal is accordingly disposed of with no order as to costs. In view of the order passed in the main matter, no order on Civil Application.

(J.N.Bhatt, Acting CJ)

(K.A.Puj, J.)

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